

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***NOTICE OF RULEMAKING ACTION
TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT****NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, Subdivision (a)(1)]**

The Department of Business Oversight (Department) licenses and regulates credit unions under the California Credit Union Law.¹ This proposed regulatory action would repeal section 30.105 of title 10 of the California Code of Regulations, which requires credit union bylaw amendments to be approved by the Commissioner of Business Oversight.² This proposed regulatory action would also amend section 30.60 of title 10 of the California Code of Regulations to delete the reference to section 30.105 in subsection (d)(2).

State-chartered credit unions are required to have bylaws.³ Financial Code section 14103 provides the manner in which the business of a credit union is to be conducted, and includes provisions the bylaws must contain. Corporations Code sections 7150 and 7151 (in the Nonprofit Mutual Benefit Corporations Law) also provide information that credit unions must include in bylaws, optional bylaw provisions, and procedures on how to amend bylaws.⁴

Pursuant to Financial Code section 14250, subdivision (b)(1), the Department examines credit unions, at a minimum, once every two years. During a credit union examination, the Department reviews the bylaws and any amendments to the bylaws made since the Department's prior examination. If the bylaws or any recent amendments are found to be inconsistent with the law or include unsafe or unsound corporate governance practices, the Department has the authority to instruct a credit union to revise the amendment so that it conforms to current law. This review of a credit union's bylaws provides sufficient oversight of credit union bylaws. The approval process for bylaw amendments currently required in the regulations is redundant. It also creates unnecessary work for the Department.

The proposed regulatory action would provide modest regulatory relief to all state-chartered credit unions. Repealing section 30.105 would allow credit unions to save time and money by eliminating application and approval procedures. The Department would also save time by eliminating an extra round of review of the bylaws. Although the

¹ Fin. Code, § 14000 et seq.

² Cal. Code Regs., tit. 10, § 30.105

³ Fin. Code, § 14103.

⁴ Corp. Code, § 7110 et seq.

Department would not review bylaw amendments until the time of an examination, problems would be addressed no later than two years after they occur, which is how the Department treats other issues of safety and soundness.

AUTHORITY [Government Code Section 11346.5, Subdivision (a)(2)]

Sections 321, 326, and 334, Financial Code.

REFERENCE [Government Code Section 11346.5, Subdivision (a)(2)]

Section 14103, Financial Code; Sections 7150 and 7151, Corporations Code.

PUBLIC COMMENTS [Government Code Section 11346.5, Subdivision (a)(17)]

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD [Government Code Section 11346.5, Subdivision (a)(15)]

Where to Submit Comments

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows, by any of these means:

Postal Mail

Department of Business Oversight
Attn: Regulations Coordinator, Legal Division
1515 K Street, Suite 200
Sacramento, CA 95814

Electronic Mail

Comments may be submitted electronically to regulations@dbo.ca.gov. Please identify the comments as PRO 03-15 in the subject line.

Fax

(916) 322-1559

Time for Comments

Comments may be submitted from July 12, 2017 until 5:00 p.m., August 28, 2017. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST [Government Code Section 11346.5, Subdivision (a)(3)]

Policy Statement and Specific Benefits Anticipated from Regulatory Action [Government Code Section 11346.5, Subdivision (a)(3)(C)]

The Department anticipates that the repeal of section 30.105 will provide modest relief to credit unions chartered in California. This proposal deletes a filing requirement that is currently required whenever a credit union licensed by the Department wishes to amend its bylaws.

Summary of Existing Laws and Regulations, and Effect of Proposed Action [Government Code Section 11346.5, Subdivision (a)(3)(A)]

Credit unions are licensed and regulated under the California Credit Union Law.⁵

An application for approval of amendments to the bylaws must include:

- (1) A certificate of secretary or assistant secretary, which shall include a statement that the bylaws, or the amendments thereto, were approved by the board of directors and, if applicable, by the required vote of the members of the credit union; and
- (2) A copy of the bylaw provision proposed to be amended which is marked to show changes between the existing provision and the provision as it is proposed to be amended.

The effect of this proposed regulatory action is that a credit union may amend its bylaws without submitting an application to the Department for approval.

Existing Federal Regulation or Statute [Government Code Section 11346.5, Subdivision (a)(3)(B)]

The Federal Credit Union Act⁶ requires the National Credit Union Administration to provide a sample form of bylaws for federally chartered credit unions.⁷ Those sample bylaws, last amended in 2007, are contained in Appendix A to Part 701 of the Code of Federal Regulations.⁸ The sample bylaws contain standard provisions for organization

⁵ Fin. Code, § 14000 et seq.

⁶ 12 U.S.C. § 1751 et seq.

⁷ 12 U.S.C. § 1758.

⁸ 12 C.F.R. § 701.

and governance of a credit union. As long as the sample bylaws are used, a federally chartered credit union does not need to seek approval for its bylaws from the National Credit Union Administration. However, if a federal credit union wants to amend its bylaws with a provision that is not listed in the sample bylaws, it must seek approval by the National Credit Union Administration.

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing state regulations and has concluded that the repeal of section 30.105 is consistent and compatible with those regulations.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

This proposed regulatory action does not incorporate any forms by reference.

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivision (a)(5) and (6), and (12)(A)]

- Mandate on local agencies or school districts: none.
- Cost or savings to any state agency: none.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Cost or savings in federal funding to the state: none.
- Significant effect on housing costs: none.

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Commissioner has made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

The proposed regulations will not affect small business because credit unions are not a small business within the meaning of Government Code section 11342.610. Subdivision (b)(1) of Government Code section 11342.610 provides that a small

business does not include a credit union.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

[Government Code Section 11346.5, Subdivision (a)(9)]

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section 11346.5, Subdivision (a)(10)]

The Department has determined that:

- The proposed action will not create or eliminate jobs within the state;
- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action will not expand businesses currently doing business within California;
- The proposed action may benefit the health and welfare of California residents; and
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

BUSINESS REPORTING REQUIREMENT [Government Code Section 11346.5, Subdivision (a)(11)]

The regulatory action does not require businesses to file a report with the Department.

CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE [Government Code Section 11346.5, Subdivision (a)(16) and (20), and (b)]

As of the date this notice is published, the rulemaking file consists of this notice; the initial statement of reasons, which contains all the information upon which the proposal

is based; and the proposed text of the regulation. The notice, initial statement of reasons, and proposed text is available by contacting the person designated below.

The notice, initial statement of reasons and proposed text are also available on the Department's website at www.dbo.ca.gov. To access the documents from the Department's website, click on the "Laws & Regs" tab at the top of the home page, click on "Rulemaking," and then click on the "Credit Union Law" link.

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Legal Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT [Government Code Section 11346.5, Subdivision (a)(18)]

If the Department makes changes which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS [Government Code Section 11346.5, Subdivision (a)(19)]

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named below or may be accessed on the Department's website listed above.

CONTACT PERSON [Government Code Section 11346.5, Subdivision (a)(14)]

Inquiries regarding the substance of the proposed regulation may be directed to:

James M. Patten-Leo
Senior Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-5979
e-mail: James.Patten-Leo@dbo.ca.gov

Nonsubstantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to the backup contact person:

Mark Dyer
Legal Division
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-1977
e-mail: regulations@dbo.ca.gov